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President: Mr. Gurirab ..... (Namibia)

In the absence of the President, Mr. Bouah-Kamon (Côte d'Ivoire), Vice-President, took the Chair.

The meeting was called to order at 10.15 a.m.

Agenda item 53

Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Note by the Secretary-General transmitting the sixth annual report of the International Tribunal (A/54/187)

The Acting President (*spoke in French*): May I take it that the Assembly takes note of the sixth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991?

It was so decided.

The Acting President (*spoke in French*): I now call on Ms. Gabrielle Kirk McDonald, President of the International Criminal Tribunal for the Former Yugoslavia.

Ms. McDonald (President of the International Tribunal): It is truly an honour for me to address for the final time the General Assembly. I will be leaving the Tribunal next week, after having served as a judge since it was established more than six years ago.

In that short period of time, the Tribunal has become an effective judicial institution, regularly conducting trials and appellate proceedings. However, it still faces challenges. Today I will discuss some of these challenges and how they may be resolved.

The Tribunal's development can be divided into two stages. In the early years we were engaged in institution-building. When the Tribunal was established in 1993, we had no courtrooms, no staff and no rules to govern our proceedings. Thus, we worked hard at creating means necessary to becoming a functioning international criminal court. This we have done. It is an achievement that is remarkable, particularly when one considers that national courts have taken hundreds, if not thousands, of years to establish their systems of justice.

The second phase of the Tribunal's development began in October of 1997, when 10 accused voluntarily surrendered to the Tribunal, and the number of detainees more than doubled overnight. Other voluntary surrenders and arrests, primarily by the Stabilization Force (SFOR), followed these surrenders, causing the number of detainees to grow to over 30 today.

The ensuing period of the Tribunal's development, which roughly coincides with my presidency, has necessarily focused on actually providing trials and appeals to individuals in detention. The Tribunal has thus

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matured, moving from institution-building to becoming an effective operating court.

There have been many challenges in both phases of our development, but I want to focus on the principal issues that we are now facing in carrying out our mandate and on which the Tribunal's future may very well depend.

One of the primary concerns I have is the length of the Tribunal's proceedings and the resulting time the detainees are spending in detention. While we are making progress in dealing with our current docket, the fact remains that the trials, in a number of instances, take long periods of time to complete. This means that the accused often spend extended periods in custody, either awaiting trial or in trial.

There are a number of reasons for these lengthy trials. The Tribunal is the first international criminal court in 50 years, and the law that it applies in many instances must be interpreted and applied for the first time. Moreover, the trials raise complex legal issues, which take time to resolve and create voluminous records. For instance, in the Blaškić case, which has just been completed, the transcript is over 25,000 pages, and the Trial Chamber rendered over 150 written decisions and orders establishing important substantive and procedural precedents.

To do justice properly takes both time and resources. The accused is entitled to a fair trial and is presumed to be innocent. The Prosecutor is responsible for proving guilt beyond reasonable doubt. This process cannot be short-circuited. I recall the words of Justice Robert H. Jackson in his opening statement at Nuremburg:

> "We must never forget that the record on which we judge these defendants is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our lips as well".

While there are reasons for the length of trial and detention, we are striving to do better. Therefore, we have initiated a number of steps to try to speed up trials. In 1998, we adopted a substantial number of amendments to our Rules of Procedure and Evidence to provide for stronger case management by the judges, particularly during the pre-trial phases. A Working Group on Trial Practices has been established with a mandate to make practical recommendations that would reduce the length of trials. The judges are also seeking an increase in their legal support staff so that they will have the resources necessary to support them in their work.

While these steps will undoubtedly assist in reducing the length of trials and the time spent in detention, the fact remains that we have a limited number of judges. I believe that we have consider more radical measures. The expert group established by the General Assembly has made a number of suggestions in this regard. I want to comment on several ideas that I think are particularly worthy of consideration.

One of the fundamental issues that the Tribunal faces is determining which of the many culpable individuals in the former Yugoslavia should be brought to justice. This is a thorny issue, as all victims of atrocities are entitled to the vindication provided by a public trial, regardless of whether the perpetrator is the highest of officials or the lowest of foot soldiers. However, we must realize that the Tribunal has only limited resources and cannot bring to trial every individual allegedly connected with the atrocities in the former Yugoslavia. Difficult choices must therefore be made.

The Security Council established the Tribunal in the belief that it would contribute to the restoration and maintenance of peace. Thus, it is my view that the Tribunal's principal responsibility is to bring to justice those individuals whose presence impedes the establishment of civil society in the former Yugoslavia. Therefore, we must bring to trial leaders who are charged with instigating the wars and who now prevent the restoration of peace and impede reconciliation. I agree with the expert group that the major objectives of the Security Council are, in large part, not fulfilled if low-level figures rather than the civilian, military and paramilitary leaders who were allegedly responsible for the atrocities are brought before the Tribunals for trial. Moreover, I welcome the new Prosecutor's policy statement that in the future she will follow "a prosecution strategy that properly focuses on leadership investigative targets".

If the Tribunal is to truly focus on the principal perpetrators it cannot become overwhelmed with cases involving other accused. Thus, the Trial Chambers must find ways to address its docket, which is currently dominated by low-level figures. One proposal that we have considered, and which has received support from the Expert Group, is for the Tribunal to have ad hoc or temporary judges available to it. These ad hoc judges

would be experienced trial judges who would be assigned cases on an as- needed basis and paid a per diem rate. Thus, when the Tribunal's docket is heavy, they would be called into service for a specific case. When their case is completed, they would return home. This would greatly aid the Tribunal in reducing both the docket and the length of detention. Moreover, the cost of such ad hoc judges would be relatively small, as they would only work on a short-term basis and would be paid accordingly. While there are a number of issues that will have to be studied, I will be encouraging my fellow judges to consider this proposal seriously.

A second proposal is the use of provisional release to reduce the length of detention. Considering the egregious nature of the charges against the accused, the difficulty the Tribunal has had in obtaining custody of many of the individuals in detention and the political conditions in the former Yugoslavia, care must be taken in granting provisional release. However, in view of the period of time some of the detainees are spending in detention, I believe that this matter must be revisited. The expert group has essentially recommended that at the initial appearance, the Trial Chamber inform the accused that if he is provisionally released and fails to return, his trial will proceed without him. Thus, if he is released and absconds, he would be deemed to have waived his right to be present at trial and his trial would proceed outside of his presence. Again, I intend to encourage my colleagues in The Hague to carefully examine this proposal.

In my view, the steps I have outlined above will go a long way toward addressing one of the most significant issues facing the Tribunal. There are other difficulties, however, which can only be resolved with the assistance of the international community as a whole. As I have repeatedly stressed, the Tribunal is dependent on the international community for effective compliance mechanisms. We have no police force or means of coercing States to follow our orders. Far too frequently our calls for State cooperation go unheeded.

I have the duty to inform the Assembly that the important work of the Tribunal is being hindered by the non-compliance of the Federal Republic of Yugoslavia, the Republic of Croatia and the Republika Srpska.

Since the fifth annual report, I have twice reported the non-compliance of the Federal Republic of Yugoslavia with respect to its obligations relating to the Prosecutor's investigation into possible violations in Kosovo. I have also reported the refusal of the Republic of Croatia to cooperate with the Tribunal on two grounds. First, that it had failed to recognize the Tribunal's jurisdiction over alleged criminal activity occurring during and in the aftermath of *Operation Flash* and *Operation Storm*. Secondly, the Republic of Croatia had failed, despite repeated requests, to transfer Mladen Naletilic, who had been indicted by the Tribunal and is in the custody of the Republic of Croatia. Croatia has indicated that it intends to transfer Mr. Naletilic. However, issues have been raised concerning his health and he is not yet in The Hague. Moreover, the Republic of Croatia has submitted a proposal to amend the Tribunal's rules that would allow it to present its arguments regarding Operations Storm and Flash to a Chamber of the Tribunal. This proposal will be considered in due course. I must emphasize that such steps do not relieve the Republic of Croatia of its obligations to comply with the requests and orders of the Tribunal. There is simply no substitute for compliance.

I must also point out that these two States and the Republika Srpska have previously been the subject of non-compliance reports to the Security Council by both my predecessor, Judge Antonio Cassese, and myself. Unfortunately, there has not been a forceful response.

I have recently written to the Security Council recounting the history of these reports and last week met with its President, Ambassador Türk, to reiterate these concerns. As I have stated, the Tribunal lacks independent coercive mechanisms and relies on the Security Council to adopt effective measures to compel State cooperation. This it must do.

It is time, I submit, for this complacency to cease. Radovan Karadzic and Ratko Mladic were indicted in 1995 and Slobodon Milosevic was indicted earlier this year. Yet these individuals remain at large. Their liberty makes a mockery of our pledge to would-be tyrants that they will be indicted, arrested and made to answer for their alleged criminal acts and violations of human rights. Moreover, over 30 of the individuals publicly indicted by the Tribunal remain at large. It has been reported that the majority of these indictees are in the Republika Srpska and in Serbia. On the eve of the millennium, it is simply unacceptable that territories have become safe havens for individuals indicted for the most serious offenses against humanity. It must be made absolutely clear to such States that this illegal and immoral behaviour will not be tolerated.

The international community is in the initial stages of establishing the permanent International Criminal

Court. Make no mistake about it: if the international community does not ensure that the orders of the Court are enforced, it is bound to go the way of the League of Nations. That would be a terrible tragedy and a tremendous opportunity lost. I urge the international community to give our reports of non-compliance the attention they deserve. No court can function effectively without meaningful methods of enforcing its orders and decisions, and the Tribunal is no different. We need your support. We need your support in carrying out our important mandate with which we have been entrusted.

While we need your support to carry us forward, we also realize that the Tribunal must work harder to communicate with the peoples of the former Yugoslavia. They are our constituents, so to speak; yet, they often have little idea of what the Tribunal is doing, except from what they learn via distorted news coverage and State-controlled propaganda. In order to strengthen lines of communication with the peoples of the former Yugoslavia, this year we have established an Outreach Programme. I am pleased to say that we have received substantial contributions from a number of generous States and organizations. We have hired a coordinator and the work has begun.

The Programme will focus on communicating with the peoples of the former Yugoslavia, in the local languages, using innovative strategies to reach bar associations, other legal groups, universities, schools and media sources, as well as the proverbial man and woman in the street. I believe that this Programme is one of the most significant initiatives that we have undertaken at the Tribunal and that it benefits our work and is helping to carry out our mandate. I encourage Member States that have not already done so to support this Programme financially so that it can become fully operational.

Let me close with a few personal observations. I am still amazed at how much we have accomplished together in such a short period of time. We have built, with your support, an institution that is dispensing justice, an institution that is playing an important role in rebuilding a troubled part of the world. Our trials and judgments are seen as fair and just. The Tribunal is engaging in bringing the rule of law to the former Yugoslavia, thus breaking the cycle of impunity.

I will always be grateful for the honour and the opportunity to have served as a judge at the Tribunal and to be a part of this extraordinary development. Although I will soon leave the Tribunal, I want to assure you that I will take my strong commitment to the work of the Tribunal and to international justice with me.

Mr. Šimonović (Croatia): Croatia has accorded particular significance to the agenda item we are considering today since its inclusion in the agenda of the General Assembly at its forty-ninth session. In this context, allow me to present the views of the Government of Croatia on the work of the Tribunal, as reflected in the report introduced by its President this morning.

Before starting, I should like to thank President McDonald of the Tribunal for the preparation of the report and her lucid presentation. I welcome her initiative for provisional release, especially with regard to the detained who went to The Hague of their own free will. It is not only unreasonable but also immoral to keep them in prison for years while they await the beginning of their trials.

I am sorry to say that Croatia views this annual report on the work of the Tribunal as, in part, outdated and therefore questions whether it is completely relevant to our discussion today. My delegation is aware of the technical difficulties in translating such a lengthy report and preparing it for our discussion, but many relevant developments have occurred since the report was finalized that, had they been reported, would have provided a more balanced picture, particularly in the segment pertaining to the cooperation of States with the Tribunal.

Allow me to mention just a few of those developments that concern Croatia. The report predates the transfer of Vinko Martinović to the Tribunal's custody. Similarly, it predates the legal proceedings conducted in the county, supreme and constitutional courts of Croatia related to the transfer of Mladen Naletilić to The Hague. Those proceedings were completed in October. The Supreme Court of Croatia confirmed the decision of the county court that Naletilić was to be transferred to the Tribunal's custody, while the constitutional court confirmed the constitutionality of the legal proceedings, as well as the decisions taken.

The report not only predates all these events, but contains criticisms for not undertaking steps that have, of course, been taken since. Naletilić has not been transferred exclusively because of his seriously aggravated health conditions. A medical team appointed by the Tribunal recently examined him and confirmed the evaluation of the Croatian medical team that his state of

health does not permit his present transfer. Let me once again reiterate Croatia's commitment to transfer Naletilić to the Tribunal immediately and unconditionally upon his recovery, consistent with the decisions of Croatian courts.

Furthermore, the report does not contain any reference to the proposal of Croatia that its legal dispute with the Prosecutor regarding the jurisdiction of the Tribunal over Operations Flash and Storm should be decided upon by the Tribunal's Chambers. My Government has also proposed amendments to the Tribunal's Rules of Procedure that would fill the existing gap concerning the right of a State to request the Tribunal's decision on jurisdictional matters in the pre-trial phase. I am glad to hear from President McDonald that the proposal will be examined by the panel of judges. Generally speaking, the demand for an opportunity to challenge the Prosecutor's assertion of jurisdiction over a matter in the pre-trial phase is perfectly legitimate, particularly when politically sensitive legal obligations raise the national security concerns of a sovereign State.

Croatia views the report as unbalanced. It does not include the positive developments I have mentioned, but rather emphasizes difficulties that the Tribunal has faced in dealing with States. It is unfortunate that the alleged difficulties in cooperating with the Tribunal, as presented in the report, are detached from the overall context of Croatia's cooperation with the Tribunal and Croatia's efforts to resolve them in a mutually satisfactory manner. Indeed, as presented in the report, most of them have already been resolved. Unfortunately, the apparent tendency to equalize all of the States within the jurisdiction of the Tribunal in the report is not uncommon.

The report presented a somewhat distorted picture of the state of Croatia's cooperation with the Tribunal. Furthermore, the offensive characterization of a political debate on the work of the Tribunal held in the Croatian parliament, coupled with the singling out by name of Croatia's officials, goes beyond the Tribunal's mandate and diverges from the established practices of United Nations reporting.

Croatia has an obligation to cooperate with the Tribunal, but it is also clear that the Tribunal should undertake its work, including its reporting, within its mandate, objectively and impartially. Genuine cooperation can be based only upon mutual respect and understanding between the Tribunal and the relevant States.

Today's discussion is an opportunity not only to consider the Tribunal's report, but also to evaluate the extent to which the Tribunal has succeeded in achieving its goals: a reliable historical record concerning the conflict and, through the individualization of guilt, the prevention of the creation of negative national stereotypes, as well as the facilitation of reconciliation. In a region where a common interpretation of historical events has never existed and where history has been a potential source of conflict, the work of the Tribunal is of paramount importance in bringing about the conditions for lasting peace and stability. For future generations, the judgements of the Tribunal will represent not only a record of the crimes committed, but also, it is hoped, an objective historical account of the developments that took place during the violent completion of the process of dissolution of the former Socialist Federal Republic of Yugoslavia.

For these reasons, Croatia is extremely sensitive towards the policy of selecting the cases to be brought before the Trial Chamber of the Tribunal. It is vital that the Tribunal reflect in its work the extent and the level of involvement of the various sides in the war crimes committed. It is absolutely essential that the nationals of the States which cooperate with the Tribunal are not, for this reason alone, the most represented as defendants in the Tribunal's proceedings.

In this context, some encouraging steps were taken by the Tribunal during the past reporting period. Some of the perpetrators of well-documented crimes were indicted and apprehended by the Stabilization Force (SFOR). The most senior officials of the State that bears primary responsibility for the violence and crimes that accompanied the disintegration of the former Socialist Federal Republic of Yugoslavia were indicted, but unfortunately only for crimes committed by their forces in Kosovo. The widening of their indictments to include the crimes committed in Bosnia and Herzegovina as well as in Croatia is vitally important.

The breakdown of the indictees in the Tribunal's custody still does not reflect what took place during the conflict. For better insight into this issue, a table with the relevant data has been made available to delegations. The disproportions are still unacceptably high. For example, the Bosnian Croats are still greatly over-represented as perpetrators and under-represented as targets. A breakdown of the indictees in the Tribunal's custody clearly shows that the nationals of the States and entities

that cooperate with the International Criminal Tribunal are disproportionately represented.

The reasons for this unchanged absurdity are the same as in past years: the continuing violation of the obligation to cooperate by the Federal Republic of Yugoslavia and the Republika Srpska.

Seven years after the establishment of the Tribunal, it is important to evaluate the results of its work to date. Unfortunately, its establishment neither stopped nor prevented war crimes. They continued to be committed in Bosnia and Herzegovina, and during a new conflict — this time in Kosovo — "ethnic cleansing" has been used as a tool once again. The failure to bring to justice the major indicted Bosnian Serb war criminals and Yugoslav Army officers, as well as all of the other indictees from the Federal Republic of Yugoslavia, obviously sent the wrong message.

It is probably too early for a final say on the effects of the work of the Tribunal on the individualization of guilt for the war crimes committed, thereby avoiding the perception of collective guilt and facilitating reconciliation. However, the lack of cooperation on the part of the Bosnian Serbs and the Federal Republic of Yugoslavia is discouraging in this respect. An even greater concern stems from the fact that this lack of cooperation indicates the Federal Republic of Yugoslavia's unwillingness to accept responsibility for its role in the war in south-eastern Europe or to prosecute those who have committed even the worst war crimes. This practice by the Federal Republic of Yugoslavia continues to have a very negative impact on the process of reconciliation which Croatia is seeking to implement. A sense of freedom from prosecution, and hence from responsibility, for the war crimes committed has been created, thereby encouraging subsequent breaches of international humanitarian law by the Federal Republic of Yugoslavia armed forces in Bosnia and Herzegovina and in Kosovo. The process of reconciliation hinges on the bringing of those responsible to justice.

The International Criminal Tribunal for the Former Yugoslavia represents a crucial experiment to see whether the international community is ready for the establishment of a permanent International Criminal Court of a wider jurisdiction. The practice of the Tribunal already is, and will continue to be, very important for the interpretation of international humanitarian law. Our final evaluation indicates that to date, the International Criminal Tribunal for the Former Yugoslavia has been partially successful in many respects. However, the crucial question is whether it will manage, through its future indictments and trials, to leave a reliable record on the developments in the former Yugoslavia. In this respect, I can promise the full support of the Republic of Croatia.

Mr. Kolby (Norway): At the outset, I would like to commend the President of the International Criminal Tribunal for the Former Yugoslavia, Ms. Kirk McDonald, on the outstanding services she has rendered to the Tribunal and to the international community.

We are impressed by the achievements of the Yugoslavia Tribunal, as reflected in its various judgements and in the report before us. Recent judgements and indictments have shed light on the chain of events linked to the cycle of violence in the former Yugoslavia. We are convinced that the existence of the Tribunal will act as a deterrent against new atrocities and contribute to the long-term process of national reconciliation in the former Yugoslavia.

We would also like to express our gratitude to the former Prosecutor for the Tribunal, Ms. Louise Arbour. Her extraordinary personal skills and genuine belief in the crucial role of the Tribunal contributed significantly to its success. We are convinced that her successor, Ms. Carla del Ponte, will consolidate and further strengthen the Tribunal's position.

We have all taken due notice of the indictments of President Milosevic and other high officials of the Federal Republic of Yugoslavia. For the first time ever we have witnessed the indictment of a sitting head of State. The irrelevance of official capacity when prosecuting grave breaches of international law was a principle identified during the Nuremberg trials and confirmed, *inter alia*, in the jurisdictions of the Yugoslavia and Rwanda Tribunals as well as in the Rome Statute for the International Criminal Court. This is a critical principle in combating the most serious crimes known to mankind — crimes which presumably, by their very nature, presuppose a conscious and deliberate contribution or omission by high-ranking officials.

During the Kosovo crisis the Tribunal responded professionally and promptly in accordance with its mandate, and thereby had a direct impact on the ongoing conflict. The Tribunal confirmed its ability to take expeditious action when confronted with a challenging situation.

The existence of a watchdog in the form of an international Tribunal has become a widely recognized element in the maintenance of international peace and security in this region and in the process of rebuilding civil society under the rule of law. Regrettably, in a global context, the existence of international criminal justice is the exception rather than the rule. In this regard, the judgements of the Tribunal represent important new building blocks in international jurisprudence with regard to the prosecution of the most serious international crimes. The experience obtained so far through the work of the Tribunal is also a stepping stone towards the establishment of the International Criminal Court.

The Tribunal is an important element in preventing the recurrence of conflict. It is critical to the success of the Tribunal that the population of the region be informed about its work and understand its significance. It is our hope and belief that this will happen, although it might take some time.

While acknowledging the achievements of the Tribunal, we are continuously reminded that the main perpetrators of atrocities committed in the former Yugoslavia are still enjoying their freedom, with the semblance of impunity. We wish therefore to emphasize that the international community must not waver in its long-term commitment to the fulfilment of the mandate of the Yugoslavia Tribunal. No one should be able to gamble on impunity for acts of genocide, other crimes against humanity or serious war crimes. Measures that have been taken against the Federal Republic of Yugoslavia by the international community, including Norway, are closely linked to the Federal Republic of Yugoslavia's lack of cooperation with the Tribunal, including surrender to the Tribunal of the indictees.

Norway remains a strong supporter of the Tribunal and joins those that have appealed to States to take all legislative steps necessary in order to ensure effective State cooperation with it. In addition to implementing legislation and ensuring compliance with the Tribunal's requests for assistance, concrete financial and material support for the Tribunal should be shown. We share the concern expressed by the Prosecutor as to the failure of the Federal Republic of Yugoslavia, as well as other States, to cooperate with the Tribunal. It is critical to the Tribunal's success that the States Members of the United Nations cooperate with it and comply with its requests for assistance or its orders, pursuant to their obligations.

Among the measures that it has taken, the Norwegian Government has declared its willingness to consider applications from the Tribunal concerning the enforcement of sentences and, subsequently, in conformity with our national law, to receive a limited number of convicted persons to serve their time in Norway. We notice with satisfaction that some other States have opened the way for such assistance. We encourage other States to prove their continued commitment to the work of the Tribunal through concrete action.

It is essential that the international community live up to its commitments to the Tribunal.

Ms. Rasi (Finland): I have the honour to speak on behalf of the European Union. The Central and Eastern European countries associated with the European Union — Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia — and the associated countries, Cyprus and Malta, as well as the European Free Trade Association country member of the European Economic Area, Iceland, align themselves with this statement.

The establishment of the International Tribunal for the Former Yugoslavia in 1993 was a decisive step in establishing accountability for crimes under international humanitarian law committed during the conflict in the former Yugoslavia. While high expectations were placed on the Tribunal, its task was known to be a difficult one. In particular, doubts prevailed over the capacity of the international community to ensure that the perpetrators of the crimes be brought before the Tribunal. The sixth annual report of the Tribunal now before us gives proof of the Tribunal's relentless efforts to meet the challenge posed to it. As observed in the report, during the reporting period the Tribunal has become a fully functioning international court, with all three of its Trial Chambers and the Appeals Chamber seized of cases. Experience shows that the Tribunal has also improved its working methods. The efforts to expedite the Tribunal's procedures are particularly to be noted, in terms both of strengthening confidence in the Tribunal's efficiency and of guarding the rights of the accused.

The Tribunal, however, is still far from completing its task. In particular, too many of those indicted still remain at large, not least persons in leading positions in the Yugoslav conflict. The past year also witnessed further atrocities in Kosovo leading to the indictment of the President of the Federal Republic of Yugoslavia,

Slobodan Milosevic. It is essential for effective restoration of law and order in the area to ensure that those suspected of serious violations of the rules of humanitarian law are brought to justice.

The European Union deeply regrets that certain States and entities in the region have continuously failed to fulfil their responsibilities to cooperate with the Tribunal, as required by Security Council resolution 827 (1993). In this regard, we take note of the letter dated 2 November 1999 from the President of the Tribunal to the President of the Security Council on State non-compliance with article 29 of the Tribunal's Statute. As the President of the Tribunal has stated, on the verge of the twenty-first century, it is simply unacceptable that territories have become safe havens for individuals indicted for the most serious offences against humanity.

In particular, the report of the Tribunal cites numerous instances in which the Federal Republic of Yugoslavia obstructed the Tribunal's investigations and procedures. Such non-compliance included the failure to defer to the competence of the Tribunal, failure to execute warrants, failure to provide evidence and information and the refusal to permit the Prosecutor and her investigators into Kosovo. The European Union has consistently acted with the objective of ensuring that all parties concerned cooperate fully with the Tribunal, and will continue to do so. The European Union urges the Federal Republic of Yugoslavia to cooperate with the Tribunal.

Similarly, while noting that the Republic of Croatia has a better record of cooperation and compliance than the Federal Republic of Yugoslavia, concern must also be expressed over Croatia's failure to comply with the requests of the Tribunal's Prosecutor to hand over an indictee and documents on Operations Flash and Storm. The European Union has taken note of the dialogue between the Tribunal and the Government of Croatia and has indicated to the Prosecutor of the Tribunal, as well as to the Government of Croatia, its concern over Croatia's serious lack of cooperation. It may also be recalled that the President of the Tribunal has approached the Security Council on this matter. The deteriorating record of cooperation by the Republic of Croatia remains a matter of vigilant attention and concern for the European Union.

In Bosnia and Herzegovina, the Republika Srpska is recorded as having continued its policy of refusing to execute arrest warrants against indictees believed to be residing in its territory. Failure to cooperate fully with the Tribunal as it carries out its mandate not only is in gross violation of the legal obligations ensuing from Security Council resolution 827 (1993) but also jeopardizes the overall goal of restoring and maintaining peace and security in the region. The European Union urges all States and entities concerned to comply with their obligation to cooperate with the Tribunal.

The European Union attaches much importance to the Tribunal's provision of protective measures for witnesses appearing before the Tribunal, and of counselling and support. Special interest is taken in the Witness Assistant Programme, with day-and-night support and assistance to witnesses. It is indispensable to the Tribunal that witnesses should feel safe and secure to appear at the trials and that they may thereafter continue their lives without continuous fear of vengeance from those prosecuted at the Tribunal. Among its contributions to the Tribunal, the European Commission has financially supported that Programme. Furthermore, some member States have volunteered to relocate witnesses and their relatives whose safety is at risk.

An important dimension of the Tribunal's activities relates to the enforcement of its sentences. In this regard, the assistance of States is called for, and several European Union member States have already concluded agreements to that effect with the United Nations, while others have indicated their willingness to act accordingly.

The European Union also appreciates the efforts of the Tribunal to make its work better known, especially in the former Yugoslavia. The report notes that the Tribunal is viewed negatively by large segments of the population in the region. This apparently results from both lack of information about the Tribunal's activities and misperceptions and misinformation spread by local authorities. It is of obvious importance that the local population be aware of the objects and goals of the Tribunal's work and also that it recognize it as a fully and effectively functioning international criminal court. Trust in and respect for the Tribunal's work are crucial prerequisites for continuing success in the performance of its tasks. The Outreach Programme initiated by the Tribunal will no doubt offer useful means for better dissemination of relevant information. Likewise, the support given by the Tribunal's Public Information Services to the Outreach Unit by continuing to expand its production of information materials facilitates achieving the goals set for the Tribunal.

As in the past, the European Union will refrain from commenting upon the individual cases before the

Tribunal. As a court of law, the Tribunal must remain independent of any political influence. The information in the report about the Tribunal's activities, however, gives concrete proof of its achievements in the implementation of its Statute.

The European Union expresses its appreciation for the important work accomplished by the judges and officers of the Tribunal. In particular, we would like to thank the President of the Tribunal, Judge Gabrielle Kirk McDonald, who has resigned as a judge effective 17 November, and Ms. Louise Arbour, who recently resigned as Prosecutor of the Tribunal, for their invaluable service in the implementation of the rule of law through the Tribunal's activities. We also welcome Ms. Carla Del Ponte as the new Prosecutor of the Tribunal.

Thanks are due also to the host country, the Netherlands, for its continuous contribution to supporting and enhancing the Tribunal's activities, as well as to all Governments which have provided voluntary assistance to the Tribunal.

In the Tribunal's report, it is suggested that the Tribunal's development and success may be measured on three levels. First, it is concluded that the development of the Tribunal as an institution has exceeded expectations. The statistics on the Tribunal's trials, indictments and detentions undoubtedly give proof of achievements and activity expressive of a fully functioning criminal court. The European Union is satisfied with the institutional development of the Tribunal.

Secondly, it is concluded that the Tribunal has laid the foundation for the establishment of a practical and permanent system of international criminal justice. Indeed, the example of the Tribunal was instrumental in the elaboration of the Rome Statute of the permanent International Criminal Court. And experience gained in the Tribunal's activities may make an ongoing contribution to preparatory work for the establishment of the permanent Court.

Thirdly, it is stated that the Tribunal is beginning to have an impact on the former Yugoslavia. The increase in the number of trials as well as in the number of those apprehended should send a clear message throughout the region. The strengthened efforts of the Tribunal in public information operations will facilitate better understanding of the Tribunal's work among the population in the region. Undoubtedly, the true impact of the Tribunal on the former Yugoslavia may be recognized only through increased public exposure and awareness of its activities.

It is essential that the work of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 be supported by the active cooperation of all Governments. The European Union will continue to participate fully in efforts to promote and facilitate the functioning of the Tribunal.

Mr. Nejad Hosseinian (Islamic Republic of Iran): At the outset, I would like to congratulate Judge Gabrielle Kirk McDonald, the President of the International Tribunal for the Former Yugoslavia, for her lucid introduction of the sixth report of the Tribunal to the General Assembly (A/54/187). I also wish to register our appreciation to her and to her colleagues in the Tribunal for their tireless efforts to accomplish the important mandate entrusted to the Tribunal by the United Nations.

Six years ago the United Nations created an ad hoc Tribunal to establish the legal accountability of those who committed the most heinous crimes, mainly against Bosnian Muslims. That landmark decision was taken thanks to the unreserved support of the international community for bringing to justice the perpetrators of such barbaric crimes. It was also a clear signal indicating that humanity would not turn its back on the victims, that the reconciliation process in the Balkans would be facilitated by the rendering of justice, and that everlasting peace and security in the region could be achieved with justice, but not without it.

The 66-page report before the Assembly reflects various developments related to the Tribunal and its activities in the 12 months from 28 July 1998 to 31 July 1999. It is gratifying to note that the court has made further progress and has become a fully functional international tribunal, with its normative framework completed and in operation.

With the increased budget and with the addition of the third Trial Chamber, the Tribunal now is in a position to speed up the proceedings and reduce the time the accused persons spend in detention. The number of the judgements rendered in the past year and the number of cases that currently are being tried or are in pretrial stages testify to this point. We wish to praise the court for the measures adopted to ensure full respect for the

rights of victims as well as for the rights of accused persons.

We further note from the report that in the period under consideration the Tribunal has been able to establish a close and productive working relationship with the pertinent international organizations. Moreover, it is carrying out the Outreach Programme, which is intended to improve understanding of the Tribunal's work, to disseminate precise information about its activities and to encourage debate within national and local communities on the role of the Tribunal in bringing enduring peace to the region.

The report also illustrates the increased support and cooperation rendered by States and international organizations for the better functioning of the court in the preceding year. Unreserved support of the Government of the host country, the Netherlands, and of other States and international organizations which have continued to provide financial assistance, contributions in kind and gratis personnel reaffirms the fact that the Tribunal continues to enjoy wholehearted support of the Member States of the United Nations.

In accordance with the relevant Security Council resolution and article 29 of the Tribunal's statute, all States are under obligation to cooperate with the ad hoc Tribunal. All States have the duty to provide general assistance and to comply with the specific requests of cooperation and orders of the Tribunal. It is regrettable to note, however, that, despite several demands by the President of the Tribunal and in defiance of calls by the Security Council, certain States have continued to refuse the arrest and transfer of dozens of culprits of inhumane crimes that happen to be in their territories. The Federal Republic of Yugoslavia, in particular, was responsible for obstructing the investigation of serious breaches of international humanitarian law and for the recurrence of humanitarian tragedy in Kosovo, the dimensions and ramifications of which are beyond any explanation.

Acts of violence against the Kosovo population and the consequent humanitarian tragedy in and around Kosovo shocked human conscience and recorded yet another dark page in the history of the Balkans as far as man's brutality and savagery against his fellow human being are concerned.

In accordance with Security Council resolutions, the Tribunal has temporal and territorial jurisdiction to investigate serious violations of international humanitarian law in Kosovo and to bring to justice the perpetrators of such crimes. We note with satisfaction that in the favourable atmosphere following the end of the Kosovo crisis, the Prosecutor has been able to dispatch inspection teams throughout the territory, who have been able to conduct extensive on-site investigations. We urge the Tribunal to continue to carry out fully the responsibilities bestowed upon it by the United Nations.

Finally, I wish to reiterate that the success of the Tribunal in fulfilling its mandate will help to promote the rule of law and deter repetition of the egregious crimes by man against man. It will indeed be a triumph for human decency. To this end, it is indispensable for all nations to vigorously support the Tribunal and to provide the assistance required to enable it to completely accomplish its mission. It is also essential that the United Nations, as the founder of the Tribunal, and the Security Council in particular, continue to support the Tribunal politically, financially and logistically and ensure that demand for international justice prevails over the interests of a few States.

In this context, I wish to reiterate that my Government continues to support the Tribunal and is prepared to cooperate thoroughly with it in accordance with its international obligations.

Mr. Jasmi (Malaysia): At the outset, my delegation wishes to extend its profound appreciation to Justice Gabrielle Kirk McDonald, President of the International Tribunal for the Former Yugoslavia, and to her team of dedicated judges and officials for their tireless efforts in carrying out their responsibilities. We particularly appreciate the comprehensive sixth annual report of the Tribunal to this body.

My delegation is happy to note that the Tribunal has evolved into a fully operational international criminal court, providing fair trials to the accused while maintaining a high degree of protection for victims and witnesses. My delegation welcomes the Tribunal's new and amended Rules of Procedure and Evidence, intended to streamline and expedite the proceedings. Malaysia hopes that the Tribunal, as once expressed by Judge McDonald, will not try cases with "lightning speed" but will conduct the proceedings in the most efficient and expeditious manner, consistent with full respect for the rights of the accused. We also welcome the appointment of the three new judges in the third Trial Chamber, which will ensure more expeditious trials.

Malaysia believes that the work of the Tribunal is an important contribution towards the restoration of peace and stability in the Balkan region. Its continuing existence is a reflection of the sustained support of the international community for the importance of the rule of law as an indispensable foundation for a just society. It is the hope of my delegation that support for the Tribunal will be manifested in a more robust way through the exertion of pressure on the Federal Republic of Yugoslavia to fully comply with its obligations to cooperate with the Tribunal.

My delegation is pleased to note the full development of the Tribunal into a fully functioning judicial institution and that at the close of the reporting period, three cases were in trial and seven cases were at the pretrial stage. Additionally, the Tribunal has rendered three judgements with an additional case awaiting judgement, and there are four cases on appeal. In total, twenty-eight detainees are currently in custody in the detention unit. My delegation is pleased to learn that three more have been detained in the unit since the report. All of this demonstrates that the Tribunal is working well and deserves continuing strong support by the international community.

My delegation expresses its serious concern that 35 publicly indicted accused people still remain at large, mostly in the territory of the former Yugoslavia. The report indicates that, despite the best efforts of the Tribunal, certain States and entities, principally the Federal Republic of Yugoslavia and the Republika Srpska, continue to obstruct the Tribunal's carrying out its mandate. My delegation urges that more serious and determined efforts be taken to bring indicted war criminals to justice, so as not to send the wrong message to these criminals or to others who might contemplate committing similar heinous crimes in other parts of the world.

The arrest of relatively minor characters is no substitute for the apprehension of the leaders responsible for the atrocities. Their continued presence in these States and entities, enjoying freedom with impunity, not only sends the wrong political message but also contributes to sustaining the climate of insecurity that limits refugee returns, particularly in minority areas. The arrest and prosecution of the indicted war criminals is not only an issue of justice; it would contribute substantively to the process of healing and reconciliation. We call upon those concerned to exert every effort to ensure that the accused are brought to justice as soon as possible. It is imperative that the provisions of several Security Council resolutions, in particular resolution 827 (1993), and the statute of the Tribunal be fully implemented.

My delegation is pleased to note that there has been a productive working relationship between the multinational force in Bosnia and Herzegovina and the Tribunal. We hope that such cooperation will be further enhanced in the interest of meting out justice and strengthening the process of restoring peace, security and stability in the region. We continue to believe that the work of the Tribunal is a vitally important contribution to that process. In all aspects of its work the Tribunal deserves the unqualified support of the international community.

Mr. Darwish (Egypt) (*spoke in Arabic*): I would like at the outset to extend my thanks to Judge Gabrielle Kirk McDonald, President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, for the comprehensive report that she has submitted to the General Assembly on the activities of the Tribunal during the reporting period. The delegation of Egypt would also like to thank to Judge McDonald for the efficiency of her presidency, which ends this month. We also extend our thanks to Mrs. Louise Arbour, the former Prosecutor of the Tribunal and welcome the new Prosecutor, Mrs. Carla Del Ponte. I also seize this opportunity to welcome the three new judges who assumed office in the Tribunal's third Trial Chamber.

The establishment of this Tribunal in 1993 reaffirmed the resolve of the international community to prosecute those who had committed serious violations of international humanitarian law in the territory of the former Yugoslavia. The Tribunal will certainly deter people who otherwise might not hesitate in committing such grave violations against humanity in the future. My delegation also welcomes the fact that the jurisdiction of this Tribunal also extends to Kosovo.

During the last six years the Tribunal was able to complete all the institutional prerequisites, particularly in terms of the composition of the three Trial Chambers, as well as the Appeals Chamber. As reflected in the report under discussion, the Tribunal has actually improved its performance, particularly as regards the steps taken to shorten the duration of the trials and the detention of suspects.

This prompts us to extend our thanks to all the staff: the judges and others. The report reaffirms that the Tribunal performs its judicial work impartially and in complete accordance with and respect for its statute. The

Egyptian delegation has followed the undertakings of the Trial Practices Working Group established by the President of the Tribunal to assess the impact of the new Rules related to prosecutorial and trial proceedings, which were adopted in July 1998 and to make recommendations on further steps that may be necessary to expedite the proceedings. We look forward to the Group's report, which is scheduled to appear before the end of this year.

We also value the court giving its attention to the protection of witnesses and ensuring their safety so that they will give their testimony without any intimidation, thereby ensuring the administration of justice. We welcome the establishment of the Outreach Programme to better inform the people of the former Yugoslavia of the Tribunal's work and to combat disinformation regarding the Tribunal's record.

The report also refers to the difficulties that the Tribunal is facing and which adversely affect its work as well as its ability to achieve the desired goals. Many of those who have been indicted remain at large. Most of them — in particular, Mladic and Karadzic — live in the territory of the Federal Republic of Yugoslavia. The events transpiring in Kosovo added to the Tribunal's burden and were responsible for a substantial part of the Prosecutor's overwhelming work load.

We have noticed that some countries have not been honouring their obligations vis-à-vis the Tribunal under its statute and Security Council resolution 827 (1993). The report provides a number of examples of States failing to cooperate. In this regard, we support the efforts of the International Police Task Force and the Stabilization Force. We stress the necessity of cooperation in the implementation of the jurisdiction of the Tribunal and of compliance with the Tribunal's specific requests for assistance and with the orders issued by its Chambers, so that all the indicted persons are turned over to trial and the Prosecutor is able to conduct investigations in accordance with article 29 of the statute of the Tribunal.

The challenges facing the Tribunal are not only attributed to the obstacles placed by some States, as Judge Gabrielle McDonald mentioned during her most important introductory statement, but there are also technical and administrative problems arising from the circumstances of the Tribunal. In addition to providing the current level of financial and human resources to the Tribunal, the General Assembly must reconsider increasing the Tribunal's budget on the one hand, and Member States should make financial contributions to the Tribunal through the trust fund on the other, so that the Tribunal will be able to perform the important role assigned to it in accordance with its mandate.

As far as cooperation with the International Criminal Tribunal for Rwanda, we noticed that contacts between the Tribunals have doubled on all levels, and there is an ongoing exchange of views regarding the protection of witnesses, the development of the joint Appeals Chamber, the preparation and translation of reports and document preservation, in addition to cooperation in other administrative matters. The Egyptian delegation believes that this approach will enhance the efforts of both Tribunals to administer criminal justice, thereby leading to reconciliation in the concerned States.

The Tribunal had a clear impact on the successful implementation of the International Criminal Court's Statute, which was adopted in Rome last year. The Tribunal has played a very important role in the elaboration of international criminal law, which previously had been limited to the level of theory and research. These efforts have also clearly led to the formulation of the rules of procedure and of evidence for the International Criminal Court.

We would not be exaggerating if we said that the international legal system was now complete. It only lacks faithful application and good faith.

Mr. Babar (Pakistan): Allow me to begin by expressing my delegation's deep appreciation to Judge Gabrielle Kirk McDonald for her presentation of the sixth annual report of the International Tribunal for the former Yugoslavia.

The establishment of the International Tribunal for the former Yugoslavia was a landmark event for the United Nations. For the victims of violence, the Tribunal was a source of consolation and a symbol of the world community's acknowledgement of their sufferings. For the perpetrators, the Tribunal marked a new level for the human rights enforcement mechanism in bringing the guilty to justice. And, for the United Nations, the Tribunal represented the opportunity to regain the trust it had lost during the war in Bosnia.

In its brief period of existence, the Tribunal has transformed itself into a full-fledged international criminal judicial institution. We are pleased to note that, during the period under review and with the assumption of office of three additional judges, all three Trial

Chambers and the Appeals Chamber are now fully operational.

Pakistan supported the extension of the Tribunal's jurisdiction over the crimes committed in Kosovo. The systematic genocide of ethnic Albanians by Serb occupation forces in Kosovo highlighted the important role which the Tribunal had to play in putting an end to the miseries of the people of the region and for bringing to justice the individuals responsible for those crimes.

We agree with the President of the Tribunal that

> "Events in Kosovo demonstrate the continuing need to ensure a high degree of vigilance to combat the forces of evil, which have made the twentieth century so devastating to so many people and regions". (*A/54/187, p.4*)

We also agree that the international community cannot allow the killing of individuals and the destruction of entire communities simply because they are of a different race, ethnicity or religion.

It is for this reason that the indictment of Milosevic and four other high-ranking officials by the Tribunal for their crimes was a historic decision. We hope that these individuals will be brought before the Tribunal one day to stand trial for the atrocities they have committed.

Pakistan is concerned about the difficulties being faced by the Court because of continuing non-cooperation on the part of certain States and entities in the region. Their cooperation remains critical to the success of the Tribunal. The collection of evidence and the arrest of indicted accused are central to the work of the Tribunal, which it cannot perform without the cooperation of the States in the region.

According to the Tribunal's report, 35 accused continue to be at large, the majority being in the territory of the former Yugoslavia. We note that the President of the Tribunal has notified the Security Council on several occasions about the non-compliance of the former Yugoslavia in the execution of the arrest warrants. Under international law, the former Yugoslavia must comply with the decisions of the Tribunal and hand over the people indicted by the Tribunal.

We have noted with satisfaction that an amount of $17.5 million has been contributed to date to the Voluntary Fund to finance the important activities of the Tribunal. Pakistan had earlier contributed $1 million to this Fund as a token of our support for the work of the Tribunal. We would also like to express our appreciation to the Government of the Netherlands for its continuing assistance to the Tribunal and its work.

Finally, I would like to reaffirm our full support for the Tribunal in its efforts to fulfil its mandate and to bring the perpetrators of crimes against humanity to justice.

Mr. Sacirbey (Bosnia and Herzegovina): We would be remiss if I did not start our statement by recognizing the efforts and results of all those associated with the International Criminal Tribunal for the Former Yugoslavia. In particular, I must herald our appreciation for the work of the three most prominent who have retired in the last few months or will soon retire: former Prosecutor Louise Arbour, former President of the Tribunal Antonio Cassese and President Gabrielle Kirk McDonald. We wish them the best. Their tireless efforts have left the Tribunal and, most critically our country, in an appreciably better situation.

Here, I would like to be both very brief and direct. First, some have argued that indictments and arrests of suspected war criminals would disrupt the peace process. The facts on the ground have shown the contrary to be true. The wisdom, foresight and pragmatism of those who supported the creation and work of the Tribunal have been proven. Bosnia and Herzegovina is much better off because of the Tribunal's efforts over the last few years, and reconciliation and the peace process have, as a whole, been decidedly strengthened. Of course, still much remains to be done. We must improve economic reform; we must improve our outdated institutions and, yes, still secure the arrest of the most visible, the "big fish", of those who have been indicted.

On this latter point, again some would argue that, for the sake of peace and pragmatism, deals should be made with the Mladices, Karadzices or Milosevices of the world. After all, they argue, other dictators and murders have been given refuge in return for quietly sweeping themselves out of the scene. I trust that these arguments are made with sincerity, but following such a policy would be disastrous. Political expediency may seem practical, but in the long term it is contributing neither to a stable peace, nor to reconciliation nor to the pragmatism of restoring normalcy in our country. Indeed, the Tribunal would immediately be lowered to the status of an imperial court.

The Tribunal would be seen no longer as a sincere effort to help the people of the region in achieving real justice, real reconciliation and real peace, but rather as a manipulated, cynical attempt at imposed diplomacy with a few show trials of the politically irrelevant. Even worse than selective justice, it would be understood as an expression of the understanding of the real worth of the individual in our region and in our societies. The United Nations would be seen as this crude actor or this crude tool in the enforcement of a new hierarchical order of human worth.

Mr. Alimov (Tajikistan), Vice-President, took the Chair.

Unfortunately, justice is sometimes not politically discriminating. That is its disadvantage, but also its most valuable asset.

In conclusion, I would very much like to ask for all members' support for the statement made by the President of the Tribunal, Judge McDonald, and for the steps that she has asked for in this Hall.

The Acting President (*spoke in Russian*): May I take it that it is the wish of the Assembly to conclude its consideration of agenda item 53?

It was so decided.

Agenda item 51

Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Note by the Secretary-General transmitting the fourth annual report of the International Criminal Tribunal (A/54/315)

The Acting President (*spoke in Russian*): May I take it that the Assembly takes note of the fourth annual report of the International Criminal Tribunal for Rwanda?

It was so decided.

The Acting President (*spoke in Russian*): I call on Ms. Navanethem Pillay, President of the International Criminal Tribunal for Rwanda.

Ms. Pillay (President of the International Tribunal for Rwanda): Mr. President, I greet you on behalf of the judges and all the personnel of the International Criminal Tribunal for Rwanda (ICTR). It is my privilege this morning to present to you the President's report of the Tribunal's activities.

As you know, the Tribunal was established by the Security Council on 8 November 1994 to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda in 1994, in order to end the culture of impunity and to promote peace and reconciliation. Now, today is exactly five years since the establishment of the Tribunal, and it is therefore necessary to evaluate the progress of the Tribunal with respect to the fulfilment of the mandate entrusted to it by the United Nations.

Thirty-nine persons indicted by the Tribunal have been detained by various countries upon warrants issued by the judges. Of this number, 37 are in our custody, one is still awaiting transfer from the United States of America and one indictment has been withdrawn by the Prosecutor. Among those in custody are the former Prime Minister of Rwanda, two former cabinet ministers, six senior political appointees, four military leaders, three former prefects, five burgomasters and persons associated with the media in Rwanda in 1994. Two new indictments involving six former Government ministers were confirmed by me in May and October of this year. There are 11 persons under indictment by the Tribunal who have not been arrested as yet.

The judicial activities of the Tribunal may be summarized as follows. The Tribunal has completed four full trials and two cases involving guilty pleas. As a result, five accused persons have been convicted and sentenced to terms of imprisonment ranging from 15 years to life. They are Akayesu, Kambanda (the former Prime Minister), Serushago, Kayishema and Ruzindana. Trial proceedings in two other cases, that of Georges Rutaganda and Alfred Musema, have been completed and judgements are expected to be delivered in December 1999 and January 2000.

The judgements of the ICTR have had a significant impact on the development of international humanitarian law. The Akayesu decision, for example, includes the

first interpretation and application by an international court of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The ICTR decisions on rape and sexual violence and crimes against humanity also constitute important judicial precedents for the international protection of human rights.

Through the establishment of the two ad hoc tribunals, the international community has given expression to a truly global desire for justice and respect for the rule of law and has made international criminal justice a reality that we hope will effectively deter future atrocities.

So while the progress is laudable, we recognize that our achievements are modest in comparison to the backlog of cases awaiting trial. We are deeply concerned with delays in the administration of justice.

Accused persons have been in custody awaiting trial for lengthy periods, a number of them since 1996. They must be tried as soon as possible in compliance with their fundamental right to trial without undue delay. Despite the fact that many of the logistical and administrative difficulties that caused a delay in the first two years of the Tribunal have now been overcome, the judicial work has not progressed as well as we had hoped. The pace of trial proceedings has to be expedited, particularly in the light of the increasing volume of work. The Office of the Prosecutor has indicated that it is engaged in approximately 90 investigations and expects to produce 20 new indictments in 2000.

The course of justice, conducted in scrupulous compliance with fair trial procedures, is often by nature a slow process. Experience shows that trials of one to two years' duration are not uncommon in both national and international jurisdictions. It is not the pace but the quality of the proceedings that must be paramount. Nevertheless, I am would like to identify and draw to your attention to some impediments in the way of expeditious trials at the Tribunal.

The judges and the Office of the Prosecutor rely on the Registrar to rationalize administrative procedures for greater efficiency. We must acknowledge the accomplishments of the Registrar, including the completion of the third courtroom. But a better-organized and more supportive court management system is urgently needed to resolve the problems that cause nearly constant adjournments of the proceedings. There are administrative problems relating to case scheduling, assignment of counsel, coordination with Defence and Prosecution counsel, provision of proper translation and court reporting services, timely publication of court rules and decisions, accurate document records, servicing of the Appeals Chamber, computerization of judicial archives and the provision of adequate staff and facilities for the Chambers, Prosecution and witness protection unit.

The judges have stressed repeatedly that the principal purpose of the Tribunal, in fact, its *raison d'etre*, is to conduct trials, and we have urged that the focal point for the administration of services and resources should be the needs of investigation, trial and the delivery of judgements. Such a prioritization is normal to the justice systems in all our countries. Unlike many of our judicial systems of administration, however, the structure of the Tribunal does not allow for the direct accountability that a Judge President can expect from the registry of a national court. The autonomy asserted by the Registrar at times has a great impact on the ability of the judicial Chambers, as well as the Office of the Prosecutor, to conduct their work independently and to control the pace and even the quality of their work.

Another area of difficulty is the inundation of pre-trial motions that we face. More than 200 pre-trial motions have been filed by Prosecution and Defence counsel over the past two years and have considerably delayed the commencement of trials. Interlocutory appeals on our rulings, which should in terms of our rules be restricted to matters of jurisdiction, further delay proceedings pending their adjudication, which in one instance took seven months.

Following the ruling of the Appeals Chamber on 3 June 1999 on the composition of a Trial Chamber, we were able to schedule hearings on the motions of the Prosecutor for amendments of indictments to allow for joint trials. Thirteen motions involving the participation of 26 Defence counsel were heard over a single week in August 1999 by the three Trial Chambers, and the resulting decisions have enabled us to schedule the trials of 11 accused, including two joint trials, for this year — October/November — and early next year.

We are keenly aware of the time-frame which has been established for us to complete our work. The former Chief Prosecutor espoused the view that the life span of the Tribunal was indefinite, and members of the United Nations expert group which recently reviewed both Tribunals estimated a minimum horizon of seven to eight years for the discharge of our mandate. We are convinced, however, that with a joint commitment to

accelerate the proceedings, and with the close cooperation of the three principal organs of the Tribunal in planning and organizing its work, it would be reasonably possible to conclude the trials of the accused presently in our custody within the period of our mandate — that is, by May 2003.

In this regard, the Rwanda Tribunal has submitted a budget in which the requirements of the Tribunal for resources and staff have been set out, and from my remarks so far it would be clear how urgently these resources are needed to enable us to complete our mandate on time.

The Tribunal does not have a police force or a jurisdiction within which it can independently effect the apprehension of suspects. Consequently, the cooperation of Member States in the execution of warrants of arrest has been critical to our ability to fulfil the mandate of the Tribunal. I wish to thank the following Member States for their support in the arrest, provisional detention and transfer of suspects and accused persons to the seat of the Tribunal: Belgium, Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Kenya, Mali, Namibia, South Africa, Switzerland, Togo and Zambia. I wish also to thank the following Member States which have issued temporary travel documents to witnesses, many of whom did not have legal status in the countries where they were residing, to enable them to appear and testify before the Tribunal: Belgium, Canada, Central African Republic, Congo, France, Kenya, the Netherlands, Rwanda, Switzerland, Tanzania, the United Kingdom and Zambia. I wish also to thank the United Kingdom and the United States for providing witness-support consultants to the Tribunal.

Nonetheless, this is an area where the Tribunal seeks further support from Member States. Without timely cooperation, producing witnesses in court as scheduled is practically impossible, and this slows down the entire judicial process. We would be grateful if more Member States passed relevant legislation as necessary and signed cooperation agreements with the Tribunal, so that when requests are forwarded there is a law to guide decision-making. We are also seeking more support in effecting the relocation of witnesses to third party States and offers from Member States to accept such witnesses.

The United Nations and the Rwandese Republic signed a Memorandum of Understanding on 3 June 1999 to regulate matters of mutual concern relating to the office in Rwanda of the International Tribunal. The privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations are to be extended to this office.

In response to the Secretary-General's appeal to Member States to provide prison facilities for the incarceration of persons convicted by the Tribunal, Mali and Benin have unconditionally agreed to provide such facilities for the enforcement of Tribunal judgements. Belgium has offered to provide its prison facilities, and Switzerland, Sweden and Denmark have made similar offers, but with conditions. Zambia and Madagascar have also indicated their willingness to provide facilities, and agreements to formalize these arrangements are in progress.

In conclusion, I reiterate the determination of the judges, all 10 of us who are in full-time residence in Arusha, to complete the trials of accused persons in our custody within the period of our mandate — that is, by May 2003. As I have said, we can do so only if we are given the necessary administrative back-up and judicial support. We welcome your scrutiny and support to ensure that the Tribunal is thus enabled to fulfil its mandate to bring justice to Rwanda.

Finally, we record our appreciation to His Excellency, Secretary-General Kofi Annan, for his unstinting support, including a personal visit to the Tribunal. In establishing the ICTR, as well as the International Tribunal for the former Yugoslavia, the Security Council has created an historic initiative for peace and human rights. To realize the potential of this initiative we need your continuing support.

Ms. Lehto (Finland): I have the honour to speak on behalf of the European Union. The Central European and Eastern European countries associated with the European Union — Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia — and the associated countries Cyprus and Malta, as well as the European Free Trade Association country member of the European Economic Area, Iceland, align themselves with this statement.

At the outset I should like to thank the President of the International Criminal Tribunal for Rwanda, Judge Navanethem Pillay, for a lucid and informative presentation.

The International Criminal Tribunal for Rwanda has delivered its first judgements during the period covered by the report now before us. Like the International

Tribunal for the Former Yugoslavia, the Tribunal for Rwanda is occupied with the most serious criminal acts committed against another human being. The first judgements of the Tribunal also included the first convictions for genocide ever delivered by an international court. While the atrocities leading to the judgements mark a dark phase in the history of nations, the judgements delivered give proof of the commitment of the international community to ending impunity over serious violations of human rights and humanitarian law.

The Tribunal is now fully established. However, it faces many challenges, both in terms of its caseload and in terms of its management. With regard to the caseload, the addition of a third Trial Chamber is an important step in facilitating the handling of the cases of the large number of accused awaiting trial. Efforts of the Tribunal to expedite its proceedings are appreciated.

Over the years, the Tribunal has been faced with a series of administrative problems. The European Union recognizes the corrective action taken by the Tribunal's administration so far and wishes to restate its strong support for the Tribunal. It appears, however, that some important issues with regard to the administrative functions, including financial control and accountability, still remain unresolved. In this regard I can refer, for example, to the latest report of the Office of Internal Oversight Services. This continues to cause the European Union serious concern. In order to secure the functioning of the Tribunal, it is important that all the recommendations made for the improvement of its administration be fully implemented.

It is on the most serious crimes that the Tribunal has expressed itself in its first judgements. There shall be no opportunity for those responsible for the crime of genocide to remain at large and not to be brought to justice. The message delivered by the Tribunal leaves no doubt on this. It should also be noted that the Office of the Prosecutor of the Tribunal is reported to be giving priority to investigations into the conspiracy to commit genocide.

The European Union also attaches special importance to the Tribunal's efforts, through investigations by the Office of the Prosecutor, to collect evidence of the sexual crimes committed in the context of the events subject to the Tribunal's jurisdiction. It is essential that the victims of sexual crimes are assured of the responsibility of the perpetrators before the Tribunal. The activities of the Tribunal's Unit for Gender Issues and Assistance to Victims are also to be supported, not least in the improvement of gender sensitivity in protecting the witnesses in trials at the Tribunal. It is obvious that special post-trial measures are needed to secure the safety of female witnesses, for instance, through relocation arrangements and counselling services.

The European Union appreciates the good cooperation of various States to ensure the arrest and detention of suspects as well as the transfer of suspects and accused persons to the seat of the Tribunal. The same applies to facilitating the appearance of witnesses before the Tribunal. In this regard, special thanks are due the host country of the Tribunal, the United Republic of Tanzania, which is reported to have adjusted its immigration procedures to allow protected witnesses to appear before the Tribunal anonymously as well as to have provided back-up security for witnesses while in Arusha. Similarly, Rwanda is reported to have provided tremendous support to witnesses travelling in and out of the country.

Valuable assistance has also been given to the Tribunal through contributions by a number of States — many of them members of the European Union — to the Tribunal's Voluntary Trust Fund as well as through donations to the Tribunal's libraries in Arusha and Kigali.

Further cooperation is needed in response to the Secretary-General's appeal to Member States to provide prisons for the incarceration of persons convicted by the Tribunal. In this regard, the Republic of Mali has assumed a pioneering role as the first State to sign an agreement with the Tribunal on provision of prison facilities for the enforcement of the Tribunal's sentences. Also, several other States have indicated their willingness to offer prison facilities for the purpose.

Of obvious importance is that the population in the area of the Tribunal's activities are made aware of its purpose, functions and the judgements delivered. The Outreach Programme, established during the reporting period to inform the Rwandan people of the Tribunal's activities, is to be encouraged to continue and to develop its efforts. Broadcasting the proceedings and judgements of the Tribunal to the Rwandan people provides a particularly efficient means of strengthening public awareness of the Tribunal's work and of the determination of the international community not to let those responsible for horrendous atrocities go free. The Tribunal's web site, for its part, serves to disseminate general information about the Tribunal to the public all

over the world. Further strengthening of the web site would be welcome.

Other developments have also taken place in the construction of an international legal aid system for the Tribunal. The report notes that, as of 10 May 1999, a total of 44 Defence counsel had been assigned by the Tribunal to its detainees. Of the 44 counsel, 21 were from Europe, 12 from Africa and 11 from North America. This duly underlines the international nature of the Tribunal as it reflects in its composition and activities the various legal systems of the world.

As in the case of the International Tribunal for the Former Yugoslavia, the European Union will refrain from commenting upon the individual cases before the International Criminal Tribunal for Rwanda. However, the European Union takes this opportunity to reiterate its commitment to support the Tribunal's work. We would like to thank the judges and officers for their efforts in the promotion of justice through the Tribunal's activities. Our best wishes are due the newly elected President of the Tribunal, Judge Navanethem Pillay, and we are grateful to Judge Laïty Kama for his work as the President for the previous four years.

It should also be recalled that the International Criminal Tribunal for Rwanda functions in close cooperation with the International Tribunal for the Former Yugoslavia. In sharing the same Prosecutor and the same Appeals Chamber, the two Tribunals have much in common and, through coordinated efforts, may in various ways promote the cause of efficient conduct of their respective proceedings.

The Tribunal is still in the early stages of its work. While judgements have been delivered, prosecution is pending or yet to be initiated in numerous other cases. The burden of the Tribunal is heavy and demanding. I would like to reiterate the wish of the European Union that the administrative problems to which I referred earlier will be overcome. With administrative improvements and organizational development there is good reason to trust in the capacity of the Tribunal to accomplish its task successfully.

Finally, I should like to emphasize that the cooperation by the Government of Rwanda, which is essential for the success of the Tribunal, should continue.

Mr. Brattskar (Norway): At the outset, let me thank the President of the International Criminal Tribunal for Rwanda for the important work accomplished by the judges and officers of the Tribunal and for her address to the General Assembly.

Norway welcomes the substantial achievements of the Rwanda Tribunal, as reflected in various judgements passed over the preceding year. It befell to the International Criminal Tribunal for Rwanda to deliver the first-ever judgements on the crime of genocide by an international judicial institution, 50 years after the adoption of the Genocide Convention. Those precedent-setting cases provide the legal confirmation that genocide did actually occur in Rwanda in 1994, and they shed extensive light on the chain of events linked thereto. Moreover, they represent important new building blocks in international jurisprudence with regard to the prosecution of the most serious international crimes. The experience obtained by the Rwanda Tribunal is also a stepping stone towards the establishment of the International Criminal Court.

We have previously expressed concern about the administrative difficulties that the Tribunal has been confronted with, and we have followed with great attention efforts to improve the working conditions in Arusha and Kigali. Over the last year significant progress has been made. We feel encouraged by steps taken and the results so far achieved. Nevertheless, we recognize a potential for further administrative improvements within the Tribunal.

Norway remains a strong supporter of the Tribunal and appeals to other States to take all legislative steps necessary in order to ensure effective cooperation with it. We note that the Tribunal has received valuable assistance from several countries, enabling the arrest of several indictees. In addition to legislation and compliance with the Tribunal's requests for assistance, concrete support to the Tribunal should be shown through financial and material contributions. The Norwegian Government has declared its willingness to consider applications from the Tribunal concerning the enforcement of sentences and subsequently, in conformity with our national law, to receive a limited number of convicted persons to serve their time in Norway. We note with satisfaction that some other States have undertaken to consider similar requests. This is critical to the functioning of the Tribunal, and we encourage more States to prove their continued commitment to the work of the Tribunal through similar concrete action.

Mr. Darwish (Egypt) (*spoke in Arabic*): At the outset, I would like to pay tribute to Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda, for the comprehensive report she has presented to the Assembly on the work of the Tribunal for the period under consideration.

I also wish to thank Judge Laïty Kama for his efforts during his tenure as President of the Tribunal. I would also like to thank Justice Louise Arbour, the Tribunal's former Prosecutor, and to welcome the new Prosecutor, Ms. Carla Del Ponte. Lastly, I cannot fail to welcome the new judges.

My delegation welcomes the marked progress made in the work of the Tribunal and its continued pursuit and punishment of those persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994.

We also welcome the creation of a third Trial Chamber, in implementation of Security Council resolution 1165 (1998), which called for an increase in the number of judges to 9. This will be very conducive to helping the Tribunal to meet the demands made on it by the increased number of ongoing trials on the one hand, and to give defendants due process on the other.

The report refers to the fact that expansion in the Tribunal was not merely functional, but also structural. I refer here to the construction of a third Trial Chamber and to the modernization and refurbishing of existing buildings. This worthwhile progress will enable the Tribunal to meet the requirements of justice efficiently and competently by speeding up proceedings, while still operating in accordance with international law and the Tribunal's statute. Furthermore, the opening of the reference library is vital to the Tribunal's ideal functioning because it is virtually the only source of research materials. We therefore encourage the efforts to enrich and develop the library.

We welcome and encourage the Tribunal's ability — within its statute and Rules of Procedure — to develop and amend its Rules of Procedure to meet the new challenges and to close existing loopholes in the present system.

The Victims and Witnesses Support Unit is of paramount importance to the proceedings of the Tribunal. The Unit provides protection from reprisal for witnesses and facilitates their transportation to and from the Tribunal in order to provide testimony, without which the Tribunal would not function. It is therefore important to provide the Unit with all the material and technical resources it needs to carry out its work in providing material and psychological support to witnesses.

With regard to guarantees provided to suspects by the Tribunal, the report refers to attempts to provide defendants with attorneys who have international criminal experience. In this connection, a code of conduct for lawyers practising at the Tribunal has been adopted, including the appointment of an attorney on a temporary basis until a permanent appointment is made. These are some of the steps that guarantee the rights of suspects and safeguard the process of justice.

We view cooperation between the Rwanda Tribunal and the International Criminal Tribunal for the Former Yugoslavia as necessary and important, so long as it does not compromise the nature and special circumstances of each. We have taken notice of the fact that communication between the two bodies and intensification of the exchange of opinions regarding the protection of witnesses has been redoubled at all levels. A common Appeals Chamber has been developed and the administration, reporting and filing systems have been improved. It is clear that the role of the two Tribunals will help in the upholding of criminal justice, which will lead to reconciliation of the States concerned.

In order to function properly, the Tribunal must be provided with the necessary financial and technical resources. In this respect, we wish to commend the efforts and contributions made by States, intergovernmental and non-governmental organizations and scientific institutions to the work of the Tribunal. However, contributions to the trust fund should be increased, as should the funds allocated to the Tribunal by the regular budget of the United Nations.

The Outreach Programme is one of the Tribunal's priorities and the cornerstone for the development and enhancement of its role. We welcome the role of the media in this respect and call on them to devote greater attention to the Tribunal.

The Tribunal will not be able fully to discharge its mandate without the cooperation of States as regards its judgements with respect to suspects, defendants and witnesses. Despite the positive role of States in this

respect — and I wish to mention the Governments of Tanzania and Rwanda in particular, and to commend their constant constructive cooperation with the Tribunal — further cooperation is still required, including introducing the necessary amendments to national legislation, so that criminals do not go unpunished and this chapter of torture and pain in the history of humankind can be closed.

Mr. Mangoaela (Lesotho): This century has been proclaimed as the bloodiest in the history of humanity, and the Rwanda genocide ranks among the worst undisputed cases of genocide the world has ever seen. The response of the international community over the years has been to proclaim laws and prohibitions against these horrors. One thing has, however, been lacking: an effective means for enforcing these prohibitions with regard to crimes that have shocked the conscience of the international community — aggression, genocide, war crimes and crimes against humanity.

It is now clear that unless the injuries suffered by the victims of these crimes are redressed and those responsible are held accountable, and that as long as the perpetrators of these crimes remain free, impunity will continue to reign. The pioneering work of the International Criminal Tribunal for Rwanda, as well the steady increase in the number of signatures and ratifications to the Statute of the International Criminal Court, are clear indications that the international community has finally come to terms with the need to fight impunity and enhance the struggle for human rights.

The report before us today catalogues a number of achievements by the Tribunal for the period from 1 July 1998 to 30 June 1999. We commend the Tribunal and its President, Judge Pillay; the other judges; the Registrar; the Prosecutor; and the staff for their commitment and dedication to the work of the Tribunal. It is indeed fitting that at a time when the Tribunal is traversing hitherto unchartered waters, it should be headed by Judge Pillay, whose work and tireless efforts in international humanitarian law have earned her the Noel Foundation award, whose past recipients include Mother Teresa, Ms. Helen Suzman and Ms. Adelaide Tambo, among others. We thank Judge Pillay for her introduction of the Tribunal's report and congratulate her most heartily on this prestigious award by the United Nations Development Fund for Women (UNIFEM) and the Noel Foundation. We also welcome Ms. Carla Del Ponte of Switzerland as the new Prosecutor and assure her of our support.

The tremendous increase in the judicial activities of the Tribunal is particularly commendable. So far the Tribunal has issued 28 indictments against a total of 48 individuals. No doubt this will represent quite a heavy menu on the Tribunal's table of dispensing justice. Let us therefore be reminded of the old adage that justice delayed is justice denied, hence the need for speedy trials of the people already indicted can not be overemphasized. It is our hope that the creation of a third Chamber and the election of additional judges will facilitate the expeditious prosecution and finalization of trials.

We note that the Tribunal has taken several steps aimed at expediting the completion of trials. In particular we note that due to the construction of a new courtroom and improvements to others, the three Trial Chambers have begun sitting simultaneously, thus accelerating the Tribunal's pace of work. Following the Appeals Chamber's ruling against interlocutory appeals regarding jurisdiction against the Prosecutor's joinder motions, the Prosecutor has successfully joined cases into groups, thus enabling him to charge several persons in one indictment. There can be no doubt that joint trials will enable optimal use of the Tribunal's judicial resources. More importantly, joinder will avoid witnesses' having to testify repeatedly about the same facts in different cases, thus minimizing the trauma of reliving their horrors.

We are confident that the Prosecutor will resort to joinder only where there is clear evidence of conspiracy and participation with others in the commission of a crime, and that the rights of each of the accused will be respected at all times. In the particular cases of joinder, the accused's rights of equality before the Tribunal should be scrupulously observed by affording all accused persons the freedom to retain counsel of their choice, and, if they are unable to do so, to be assigned one by the Tribunal. This is not only a right under international law but also a right enshrined in the Tribunal's Statute. The Registrar, as the official charged with assigning counsel, should thus make determinations regarding the indigence of the accused and either grant or deny the assignment of defence counsel without delay.

After hearing a total of 191 witnesses in four cases before it — 130 for the prosecution and 61 for the defence — the Tribunal has completed its deliberations and delivered judgements in all four of them. This is by no means a small achievement, given the complexity of the issues and the length of the proceedings. The conviction of the former Prime Minister of Rwanda and other high-ranking officials is conclusive proof that

genocide was indeed committed in Rwanda. The importance of these convictions lies not only in their historic significance in being the first-ever pronouncement by an international court on the crime of genocide and on the fact that sexual assault can constitute an act of genocide, but also in the contribution that they have made to the jurisprudence of international humanitarian law and international criminal justice. No longer will it be possible for anyone who commits these crimes to escape punishment. As we await the outcome of deliberations in the other two cases, it is our hope that these convictions will spur the international community to cooperate with the Tribunal in tracking Rwanda genocide suspects, wherever they may be.

In this regard, it is encouraging to note that cooperation of States with the Tribunal has progressively increased since the Tribunal first began its work. Indeed, the achievements of the Tribunal have been largely due to the cooperation of many States. A number of countries have cooperated and assisted the Tribunal not only with the arrest of suspects and accused persons, but with tracing witnesses and issuing travel documents for them to travel to and from Arusha to give evidence. The implementation of protective measures for witnesses in the territories of various countries and the willingness of States to relocate witnesses are also commendable. This is indeed the type of collective effort that will continue to be indispensable if the Tribunal is to dispense justice.

The need for cooperation in enforcement is also steadily increasing. Out of the five people so far convicted by the Tribunal, three have been sentenced to life imprisonment, while two have been sentenced to 25 and 15 years, respectively. As the Tribunal hands down judgements, it will require increased cooperation from States for the incarceration of convicted persons. We thus applaud the Governments of Mali and Benin for being the first to rise to the challenge of signing agreements on the enforcement of the Tribunal's judgements and hope that it will not be long before many more countries emulate the examples set by these two countries.

The Governments of Rwanda and Tanzania deserve our special commendation for the cooperation they have afforded the Tribunal. The cooperation extended by the Rwandan Government to the Office of the Prosecutor in Kigali has made it possible for the Prosecutor's Office to effectively carry out its investigations and to interview witnesses. We are particularly encouraged by the recent appointment by the Government of Rwanda of a special representative to the Tribunal, a move which we believe will help foster a better understanding by the Rwandans of the difficulties of the tasks faced by the Tribunal and thus dispel some of the suspicions Rwandans initially had about the Tribunal. No doubt the Registrar's advocacy of restitutive justice and assistance to the victims of the genocide will be greatly enhanced by the appointment of the official representative.

The Government of the United Republic of Tanzania continues to host the Tribunal and has allowed the setting up of detention facilities for housing suspects pending and during their trial. The financial, material, human, technical and logistical support extended to the Tribunal by many Governments and organizations has indeed enabled the Tribunal to discharge its mandate. It is our hope that these contributions will be not only maintained, but increased to enable the Tribunal to tackle the challenges that lie ahead.

In conclusion, I wish to stress the importance of the Tribunal for Africa, a continent which, more than any other, continues to witness many conflicts, in the midst of which the worst types of atrocities are being committed on innocent civilians, including women and children. Our strong moral, political and financial support for the Tribunal will ensure not only that future dictatorial regimes will be effectively prosecuted for their actions, but that there will never be a repeat of genocide in our continent or, indeed, worldwide. The success of the Tribunal augurs well for the future permanent International Criminal Court, as the lessons to be drawn from its experience will no doubt enhance the effectiveness of the future Court.

Mr. Kasanda (Zambia): Allow me first of all to thank the President of the International Criminal Tribunal for Rwanda for her comprehensive introduction of the report on the activities of the Tribunal from 1 July 1998 to 30 June 1999, contained in document A/54/315.

My delegation attaches great importance to the work of the Tribunal because of the grave nature of the crimes from the events that took place in Rwanda between 1 January and 31 December 1994. The ramifications of these unfortunate events were far-reaching. While Rwanda shouldered the heaviest burden, the effects were felt by other countries in the region, including my own, Zambia.

As we are all aware, 1994 will go down in the annals of history as the year in which some of the worst acts of genocide and other heinous crimes against

humanity were committed. The horrific events that took place in Burundi and Rwanda that year will forever haunt the conscience of mankind. That tragedy would not have reached such proportions had the international community intervened before thousands of innocent lives, including those of women and children, had been lost. Furthermore, the Tribunal itself was established late, allowing the perpetrators of the heinous crimes to escape. Unfortunately, even after its establishment the Tribunal still faced internal problems which affected its effectiveness.

We are therefore pleased to note that the period covered in the present report has been termed an historical one for the Tribunal. As indicated in the report, during this period the Tribunal delivered its first four judgements. More importantly, the Tribunal delivered the first conviction for the crime of genocide ever handed down by an international court. These positive results are a clear sign that the Tribunal has finally begun the process of discharging its mandate of rendering justice for the victims of genocide in Rwanda. We would therefore like to take this opportunity to commend the good work being done by the Office of the Prosecutor which, together with that of the other sections — the investigation section, the legal section and the information and evidence section — has made it possible for the Tribunal to secure its indictments. However, we must also take note that the court still has a lot of work ahead as new indictments are secured and transfers and arrests are made. The court also has 31 indicted persons currently in custody awaiting trail.

My delegation understands the circumstances that led to the delay in the disposal of the first cases before the Tribunal. In addition to other factors, the International Tribunal is a relatively unprecedented initiative, which thus required tremendous preparatory work before judicial work could effectively begin in September 1996. It is my delegation's hope that, with the construction of a third courtroom and an additional new Trial Chamber, and with the increase in the number of judges from six to nine, the Tribunal will begin to deal with the remaining cases in a more expeditious manner. We hope that the outstanding cases will be disposed of before the mandate of the current judges expires in 2003.

The importance of enforcing sentences handed down by the court cannot be overemphasized. In our view, the most critical part of the whole trial process is the actual carrying out of the sentence once it has been delivered. In this regard, we call upon those countries that are able to do so to provide prisons for the incarceration of persons convicted by the Tribunal. We also wish to thank those countries that have expressed their willingness to do so. We wish to appeal to other countries that are in a position to do so to assist African countries that are willing to make their prisons available but limited by inadequate facilities. The enforcement of sentences will go a long way in strengthening the effectiveness of the court and the international judicial system.

My country is one of those which has agreed in principle to make its prisons available for the incarceration of persons convicted by the Tribunal. However, it has not been possible for it to do so in practice because of inadequate facilities. My Government has held meetings with the officials of the Rwanda Tribunal to determine what assistance can be rendered to Zambia to enable us to make prison space available.

As pointed out earlier, my country, together with other neighbouring countries, is one of those that was indirectly affected by the genocide in Rwanda. Apart from the influx of refugees into my country, some of the suspects also fled into Zambia. We have cooperated with the Tribunal in the delivery of arrest warrants and in carrying out the arrests themselves, as well as in detaining and transferring suspects and accused persons to the seat of the Tribunal. In this regard, I am happy to state that Zambia was the first country in Africa to do so. Furthermore, as the President pointed out in her statement earlier, we have also assisted in making it possible for the witnesses to appear before the court by cooperating with the Tribunal in issuing temporary travel documents for them.

We note with satisfaction the establishment by the Registrar of the Tribunal of a Unit for Gender Issues and Assistance to Victims; a call has been made to donors to support that initiative. In this regard, my delegation is pleased to note that a number of countries have made contributions to the Voluntary Trust Fund to support the activities of the Tribunal, including in the areas of witness support mentioned above. We would like to take this opportunity to thank those countries for their contributions. We would also like to thank the countries that have donated funds for other specific needs of the Tribunal as well as those that have made donations to the library of the Tribunal.

Mr. Bandora (United Republic of Tanzania): Permit me to begin by congratulating Judge Navanethem Pillay on her election to the presidency of the International Criminal Tribunal for Rwanda, even as we commend her for introducing the fourth annual report of

the Tribunal, contained in document A/54/315. The current report of the Tribunal is certainly a source of encouragement regarding the mandate and work of the Tribunal for Rwanda. We are encouraged that the pace of judicial activities has increased and that the third Trial Chamber is now in operation. We are encouraged to note that in spite of the numerous difficulties the Tribunal faced in the past, it was not deterred in its efforts and remained focused on the objective of fulfilling its mandate. We are especially encouraged by the determination of the judges of the Tribunal, as conveyed by the Tribunal President this morning, to complete the trials of all those in custody within the period of the mandate of the Tribunal, that is by May 2003.

As host to the Tribunal, Tanzania has a fundamental interest in its success. We have this interest because of our similar fundamental interest in peace and stability in Rwanda. We see the pursuit of justice as reinforcing our primary desire for peace and stability in that country.

The Tribunal has a vital role to play. For indeed, without sufficient accountability of individuals for genocide and crimes against humanity, there will remain collective guilt which will, in turn, fuel continued intra-society conflict. In this regard, we note the first conviction for genocide made by the Tribunal. We welcome in particular the inclusion in the Akayesu judgement, the first interpretation and application by an international court of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, of the determination that rape and sexual assault constitute acts of genocide insofar as they are committed with intent to destroy, in whole or in part, a targeted group. This is a ground-breaking interpretation; by expanding the scope of the crime of genocide, it will have far-reaching significance in similar cases elsewhere with respect to the protection of human rights.

While we applaud this development, we cannot forget that accountability for crimes committed on such a wide scale has been delayed for too long. We must therefore renew our commitment to efforts to fight and condemn genocide and crimes against humanity. It is in this regard that we welcome the response to the Tribunal's past appeals for cooperation, as evidenced by new arrests and transfer of suspects to the Tribunal. This has been gratifying and reflects the partnership which must exist with Member States if the Rwanda Tribunal and, indeed, that for the former Yugoslavia are to be successful in discharging their mandates.

The success of these Tribunals and the reach of their significance is not of importance only to the territories where the crimes were committed, but even further beyond. This is true of the Great Lakes region, just as it is true in Sierra Leone, in Angola and, recently, in East Timor. Perpetrators of genocide and crimes against humanity must be put on notice that we have a relentless commitment to the protection of humanity and will make untiring efforts in that regard, and that they will be sought out and brought to justice.

We note that agreement has been reached between the Government of Rwanda and the Tribunal on the modalities for cooperation, and that Judge Pillay and her colleagues have been able recently to visit the country. We welcome this development and encourage both parties to build on this beginning an expanded framework for cooperation which will expedite the work of the Tribunal. The work of the Tribunal is critical in the process of rendering justice and promoting national reconciliation and healing in Rwanda. It is important therefore that the work of the Tribunal be known to the victims of genocide and that they feel confident that justice is being done and that those who have hitherto enjoyed impunity will not go unpunished.

We would be remiss if we did not address the question of the availability of office space for the Tribunal. My Government recognizes that it has not always been possible to respond in time to all the office space needs of the Tribunal within the Arusha International Conference Centre. This has been due in the main to circumstances beyond our control, including in particular lawsuits instituted by sitting tenants who are either refusing to vacate or seeking unreasonable compensation. The Government is continuing its effort to settle these lawsuits as expeditiously as legally possible and to promptly put at the disposal of the Tribunal additional space in the Conference Centre.

On behalf of the Government of Tanzania, I wish to thank the Tribunal and, particularly, the Registrar for their understanding and cooperation. Through the bilateral mechanisms which have been instituted, our two sides have also been able to resolve practically all outstanding administrative and logistical issues quickly and amicably. We shall endeavour to improve and strengthen these arrangements in the days ahead.

Ms. Fritsche (Liechtenstein): When the International Criminal Tribunal for Rwanda was established five years ago by Security Council resolution

955 (1994), the task it faced seemed almost impossible to accomplish. Not only was the Tribunal to deal with a genocide the dimensions of which will probably never be known in their entirety, but its early work was also hindered by a lack of political support, most notably from the country to which it was supposed to render assistance in overcoming the consequences of the 1994 genocide. When the Office for Internal Oversight Services issued a report on the Tribunal in which it criticized the Tribunal in the harshest terms for ongoing waste of resources, nepotism and other forms of mismanagement, the future of the Tribunal seemed more than unclear.

We can note today that the Tribunal has made a remarkable turn in the right direction and has been engaged in a process of recovery. That process is not completed yet, and further administrative measures need to be taken by the Tribunal itself to address remaining concerns, in particular in the fields of accountability and financial control. Nevertheless, the Tribunal has already brought about important results and has delivered on its promise to make a contribution to the process of reconciliation in Rwanda and also to the overall commitment of the international community to put an end to the rampant practice of impunity. When I visited the Tribunal in Arusha this summer, I very much appreciated the opportunity to get an insight into what tends to remain somewhat abstract if seen only on the pages of United Nations documents. My gratitude for a warm welcome in Arusha goes to the President of the Rwanda Tribunal, Judge Navanethem Pillay; to the Registrar, Mr. Agwu Ukiwe Okali; and to the Spokesman, Mr. Kingsley Moghalu. It also became clear to me during that visit that we all owe special gratitude to the host country, the United Republic of Tanzania.

The caseload before the Tribunal is enormous, and it is thus important that it benefit from unequivocal support from the international community. The report before us bears witness to encouraging developments concerning cooperation from Member States, and we have taken note with particular interest of the positive remarks in it regarding the cooperation extended by the Government of Rwanda. The addition of a third Trial Chamber was certainly an important contribution to enhancing the effectiveness of the Tribunal, and efforts by the Tribunal itself to expedite its proceedings are both possible and necessary, as became clear just recently.

The judgements which the Tribunal has rendered in the course of the last year are undoubtedly of historic significance. While we wish to refrain from commenting on the specifics of any of the cases before the Tribunal, I would like to offer some general thoughts. The genocide which took place in Rwanda more than five years ago and its magnitude are beyond comprehension for any of us. In dealing with its consequences, we have to realize that there is no such thing as compensation or remedy. The most we can, and actually have to, strive for is a healing process, a process to which the Tribunal can make an important contribution. We owe the people of Rwanda our full support in this regard.

Simultaneously, however, there should also be a learning process, to which the Tribunal has already made a contribution since its very establishment. At that time, when the events in Rwanda began to unfold, the word genocide was almost taboo in the public debate here at the United Nations and in other international forums. This was certainly one of the reasons for the response by this Organization, which has been the subject of much criticism. The work of the Tribunal and other developments have forced us to stop treating genocide exclusively as a topic for legal textbooks and to realize how painfully relevant it can be to the lives of people and have reminded us of our far-reaching obligations under the Genocide Convention of 1948. The establishment of the International Criminal Court has been the most important expression of this learning process so far.

Another element has to be enhanced accountability for action taken within and by the United Nations system. Work remains to be done in this respect, both with regard to Rwanda and to Bosnia and Herzegovina. This work is as difficult as it is indispensable both to maintain and to strengthen the credibility and the authority of this Organization. We strongly support the efforts being undertaken in this respect.

Mr. Mutaboba (Rwanda): First of all, allow my delegation and myself to thank Judge Pillay for her report and also to extend the same thanks to her colleagues and the whole Tribunal for the efforts made, while also adding our appreciation to the host country, Tanzania, and to the countries which have been consequent with themselves and with international law to arrest, detain and hand over the criminals that the International Criminal Tribunal for Rwanda (ICTR) is judging today.

On 4 September 1998 the International Criminal Tribunal for Rwanda sentenced the former Prime Minister of the Rwandan genocidal regime, Mr. Jean Kambanda, to life imprisonment. This was the first time that an individual was punished for genocide by an

international tribunal. Kambanda had pleaded guilty to these crimes, essentially admitting that the criminal enterprise of Rwanda's mass killings was a State-sponsored plan aimed at wiping out the Batutsi.

The judgement was a landmark in international law. In the years after World War I, several unsuccessful attempts were made to establish international tribunals to prosecute individuals responsible for war crimes. But international criminal justice took root only after World War II with the tribunals set up by the Allied Powers in Nuremberg and Tokyo to prosecute war criminals.

In the aftermath of the 1994 genocide — in which one million Rwandese were exterminated in killings at a greater rate than the Nazis did during the Holocaust, with an average of ten thousand innocent civilians a day during a period of about one hundred days — an opportunity for the world to condemn genocide and promote accountability seemed to have painstakingly emerged with the establishment of the International Criminal Tribunal for Rwanda. The ICTR initially started out in a very sluggish manner in its move towards justice, as it was plagued by corruption, overlapping jurisdictions and logistical problems. Today blunders are piling up — it is true, though not as many as there were before — and we wonder if this Organization is not failing Rwanda yet again. I am referring to what happened on Friday.

The structure of the current international ad hoc penal tribunals — I mean the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia — is less than a perfect response to mass atrocities, for a number of reasons. Only a relatively small number of people can be tried. Trials are unavoidably lengthy because of the judicial proceedings. All this can try the patience of victims and observers and raise questions about the court's deterrent effect.

Despite the need for an International Criminal Court, its probability of success should be evaluated in light of the International Tribunals for Rwanda and the Former Yugoslavia. If these Tribunals are ultimately viewed as ineffectual, the international community should reconsider its commitment to creating what would amount to a permanent version of a temporary failure and a permanent United Nations failure for Rwanda. As it has been discovered with the ICTR, there is a significant gap between establishing an ad hoc judicial institution through a Security Council resolution and rendering it operational at the practical level. Ultimately ad hoc tribunals should be assessed by the international criminal justice they can provide.

For several decades, the international legal community has attempted to realize a permanent criminal court. The court would be a permanent version of previously convened transitory tribunals. Logic would dictate, however, that a permanent institution be developed only if its predecessors were successful. There can be no dispute that consistent enforcement of the Genocide Convention is imperative for the deliverance of international criminal justice. The preservation of a peaceful global existence, if not international law itself, requires the prosecution of individuals accused of genocidal behaviour.

Today many countries seem to be putting the cart before the horse by talking about offering prisons and prison facilities in some countries before the criminals have been detained. This should be corrected.

The Genocide Convention requires that those accused of perpetrating genocide be prosecuted either by domestic courts or by an international criminal tribunal. Although both options were used to prosecute individuals accused of genocidal behaviour in Rwanda, the ICTR has faltered where domestic trials have flourished. While the Tribunal has obtained few convictions, Rwanda's national judicial system has already prosecuted 1,989 criminals and executed 22 perpetrators of genocide. If the success of international criminal justice is measured in terms of concrete results, the ICTR has failed.

It seems to have failed because all along it has never given the impression of trying suspects with seriousness. The Tribunal had to improve their accommodations, the people in Arusha know, to provide them with a bed, a television set and now computers even. They had to make sure, because the customers were fully satisfied with the defence lawyers, most of whom were drawn from the same countries; you name them. They had to make sure that their customers got the right judgement, no matter the price. These reports have failed to talk of such cases, yet they are documented.

For example, the Akayesu case. This criminal changed defence lawyers so many times because of the alleged language problem that it got to the point where he even ordered an English-speaking defence lawyer to be hired when he could not utter a single word of English. This exercise alone cost $1 million. We would like to know how much was spent in the trial of Major

Ntuyahaga, who surrendered himself to the Tribunal but was later released in a surprising style. We do not know how much it cost in the case of Jean Bosco Barayagwiza, one of the infamous ideologues of genocide, who was just released last Friday, to everyone's surprise and utmost dismay.

Major Ntuyahaga and Jean Bosco Barayagwiza were not released because they were proven innocent. They have been released in a strange move imputable to the deliberate delays by the Tribunal Prosecutor's Office. Are not such technical reasons clearly being used so that one criminal after another can be released by the United Nations Tribunal? This is a very serious question. If this is the case, we wish to condemn this complicity between those meant to prosecute and the criminals.

The location of the ICTR outside Rwanda has often led the Rwandan public to doubt its existence and its commitment to mete out justice on the Rwandan people's behalf, as for a long time they knew very little or nothing about its proceedings. Because of what happened with Jean Bosco Barayagwiza, as of Friday — and within the limits of our laws and applicable international law — we have suspended any cooperation with and assistance to all organs of the International Criminal Tribunal for Rwanda. It is a temporary suspension, but we mean it, and we need clarifications.

We would also like to have our own public prosecutor. We do not see any logic in having one single public prosecutor addressing two different realities. In Rwanda the killings were sponsored by the Government, as the State machinery had been unleashed for the systematic elimination of one segment of Rwandan society.

For instance, we fail to understand why the Tribunal's witness-protection programme was only established two years after the witness-protection programme of the International Criminal Tribunal for the Former Yugoslavia was already in full swing. Many of the victims who have testified before the ICTR have complained that they have been forced to endure all sorts of frustration and dreadful trauma due to this Tribunal's insensitive, careless and weak witness-protection programme. Yes, there has been some improvement, but not enough. Some key witnesses have even decided to cease testifying before the Tribunal out of fear for their personal safety, which has at times in the past been overlooked by Tribunal officials involved in the witness-protection programme. We should not forget the two key witnesses who were hacked to death by Interahamwe upon their return from the Kayishema trial, after having testified before the ICTR. Now that Ntuyahaga, Barayagwiza and more are being released by the Tribunal, more witnesses are going to be hunted down and killed, thanks to the Tribunal's own technical errors — which I hope were not deliberately devised to protect the criminals it is supposed to indict.

Regarding the ICTR recruitment procedures, we are still worried and dismayed to witness that there are few Rwandans working for the Tribunal. It is our view that more Rwandans should be recruited to participate in the process of bringing to justice those who massacred their loved ones. This may not sound very just to some, but it sounds just to the Rwandan people and Government. This should not be seen as a privilege but a fundamental human right. Much as allies to the criminals are defending them, victims and survivors should have a say — let alone the Government that bears all the psychological effects of the miscarriages of justice that this Organization is not monitoring with *due attention*. We deplore this.

Lastly, we would like to express our dismay at and condemn the abuses by some Tribunal convicts. For instance, I return to the case of Akayesu mentioned earlier. This report failed to publish what happened in the Akayesu case: the squandering of $1 million just because of the accused's behaviour. This should stop and should be monitored.

The recent appointment of Mr. Martin Ngoga as Rwanda's representative to the ICTR was aimed at curing some of the aforementioned shortcomings, so that the Tribunal can finally pursue the objectives for which it was established. Unfortunately, the release of Barayagwiza makes it look like our efforts have been in vain, and we intend, as I said, to temporarily withdraw if this Organization does not steadily seek to improve what is being done.

The expeditious organization of an effective ad hoc tribunal is not an easy assignment. Many difficulties are associated with such an undertaking, for example: negotiations with host countries, recruitment and placement of qualified international staff, and training judges for the prosecution of genocide cases.

As Member States will recall, in the aftermath of the 1994 Rwandan genocide, the Rwandan Government requested the establishment of an ad hoc tribunal that would assist, in a complementary manner, the Rwandan national judicial system in allocating responsibility on

genocide-related cases. Ultimately, the Rwandan delegation — which at that time was serving as a non-permanent member of the Security Council — decided to vote against Security Council resolution 955 (1994), which established the International Criminal Tribunal for Rwanda. In 1997 the Office of Internal Oversight Services deliberated after an audit on the working methods of ICTR cases of corruption involving the hiring of unqualified relatives and friends of the Tribunal staff, discrimination against non-Africans and so on, using resources without authorization and delaying the disbursement of funds. The then ICTR Registrar was accused of mismanagement in the final report of the Office of Internal Oversight Services.

As I said, more mismanagement has erupted in a different form: the miscarriage of justice by some identifiable people, such as what happened last Friday. We cannot accept this, and we need an explanation of it.

Many of the irregularities and deficiencies were predicted by our Government right after the adoption of resolution 955 (1994), and these predications are on record in official Security Council documents. The time should and will come when this Organization answers to its responsibilities vis-à-vis the world, the international community and Rwanda.

Despite the recognition that the crime of genocide is prohibited by international criminal law, genocidal actions continue to be carried out before the passive eye of the international community. This is because we cannot punish properly and correctly those responsible for what has already been committed. The universal failure to take effective action against genocide has made a mockery of the most sacred values of civilization. International criminal law enforcement must be the means by which fundamental human rights are protected and preserved. The core problems of genocide transcend considerations of the fate of individual victim groups. Until all those who violate the law are brought before it — which would be genuine criminal international justice — the international community must face the realization that global victimization does not elicit commensurate universal jurisprudence.

Article VI of the genocide Convention states that

> "Persons charged with genocide... shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction".

Thus, two options exist to prosecute genocide perpetrators. Domestic officials can prosecute internally individuals accused of genocidal behaviour or the United Nations may convene ad hoc tribunals.

By pure coincidence, at the time of the establishment of the Tribunal, the Rwanda delegation, which represented the current Government of National Unity, was a member of the Security Council. Member States will recall that the Rwandan delegation gave clear and reasoned support to the Tribunal — as it still does today, with caution — but its mandate did not adequately meet our expectations, as we saw on Friday. Today, the Tribunal's behaviour and output will leave us with no option but to give it a vote of no confidence if the trend of releasing criminals goes on, as it appears to be doing.

In our protest about the Tribunal's structure, we argued that the establishment of so ineffective an international tribunal would only appease the conscience of the international community, rather than respond to the expectations of the Rwandese people and the victims of genocide in particular. From the outset, we recognized that the global community was attempting to develop a mode of international criminal justice that it was incapable of developing, implementing and sustaining effectively.

Among the primary reasons we voted against the resolution was that the strongest punishment available was not the death penalty. I do not want to comment on this now; I have an appropriate forum in which to do so. One element we have to add to this is the system we have revived, known as the *gacaca*, to decide how we can bring more prosecutions against offenders in order to help the International Criminal Court and ourselves to speed up those trials and relieve the prisons. Prisoners will be tried in public before the entire community. Drawing on recollections of the accused and the villagers, the judges will compile a list of those who died in the genocide and of those who are responsible. The accused will then be judged and sentenced. The innocent will be released, the guilty punished in accordance with the severity of their crimes.

To conclude, this project is meant to give us a chance to prove to the world that justice has no substitute in the case of genocide and that the Convention on genocide should bind us together as an Organization and as the individual Members that compose it. As Members of the same Organization, each and everyone of us is called upon to make his or her contribution to get justice

done. If we fail, we cannot promote or protect human rights and we should all fight against and break the cycle of impunity wherever it resurfaces.

The Acting President (*spoke in Russian*): May I take it that it is the wish of the Assembly to conclude its consideration of agenda item 51?

It was so decided.

The meeting rose at 1.15 p.m.